Supreme Court, U. S.
FILED
AUG 27 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-301

GERALD B. BAUMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

FRANCIS D. THOMAS, JR.
JOSEPH SCHIMMEL
EUGENE MAR
Attorneys for Petitioner.

Of Counsel:

Bacon & Thomas
1755 Jefferson Davis Highway
Suite 300
Arlington, Virginia 22202
(703) 979-9340

THOMAS M. SMALL
Fulwider, Patton, Rieber, Lee & Utecht
3435 Wilshire Boulevard, Suite 2400
Los Angeles, California 90010
(213) 380-6800

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

OPINIONS BELOW 2
JURISDICTION 2
QUESTION PRESENTED 2
STATUTORY PROVISION INVOLVED 3
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 6
CONCLUSION 10
APPENDIX A
Denial of Petition for Rehearing (C.C.P.A.) 1a
Decision of the Court of Customs and Patent Appeals 2a
Decision of the Board of Appeals of the U.S. Patent and Trademark Office 5a
Summary of Claim 17 . . . . . 11a
Baugh U.S. Patent No. 367,178 . . . . . 12a

TABLE OF CITATIONS

Cases:
In re Duva, 55 C.C.P.A. 829, 156 U.S.P.Q. 90 (1967) 7
In re Mancy, 499 F.2d 1289, 182 U.S.P.Q. 303 (C.C.P.A., 1974) 7
In re Mullen, 481 F.2d 1333, 179 U.S.P.Q. 97 (C.C.P.A., 1973) 7
Graham v. John Deere Co., 383 U.S. 1, 15 L.Ed.2d 545, 86 S. Ct. 684 8

Statutes:
35 United States Code, Section 103 3
28 United States Code, Section 1256 2

Constitution:
Article I, Section 8, Cl. 8 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No.

GERALD B. BAUMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Petitioner prays that a writ of certiorari issue to review the decision of the United States Court of Customs and Patent Appeals, entered February 27, 1975 in Patent Appeal No. 74-615 entitled *In The Matter Of The Application of Gerald B. Bauman.* That Court has denied, on May 29, 1975, a timely petition for rehearing in the case.

OPINIONS BELOW

The opinion of the Court of Customs and Patent Appeals to which review is sought was not reported in any printed volume. A copy of this opinion is reproduced in the Appendix attached hereto. In addition, a copy of the unreported opinion of the U.S. Patent and Trademark Board of Appeals, which opinion was entered on February 20, 1974, is reproduced in the attached Appendix. Further, a copy of the denial of the petition for rehearing, which denial was without opinion, is also included in the attached Appendix.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on February 27, 1975. A timely petition for rehearing was denied on May 29, 1975, and this petition is being filed within ninety (90) days thereof.

The jurisdiction of this Court is invoked under 28 U.S.C. 1256.

QUESTION PRESENTED

Should an inventor be deprived of his statutory right to a patent based upon the C.C.P.A.'s interpretation and application of 35 U.S.C. 103 in a manner inconsistent with Congressional intent as recognized by the U.S. Supreme Court, by the express statutory language and by decisions by other Federal Courts?

STATUTORY PROVISION INVOLVED

35 United States Code 103 (July 19, 1952, c. 950 §1, 66 Stat. 798).

§103. Conditions for patentability; non-obvious subject matter.

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

STATEMENT OF THE CASE

Petitioner, Gerald B. Bauman, an individual, filed an application for patent in the U.S. Patent and Trademark Office on August 5, 1970, as a continuation-in-part of an application filed earlier on October 14, 1966. Both applications were directed to the same general subject matter, a system for geocoding a given geographical area.

Petitioner's invention, in its most basic manifestation as recited by the broader claims,[1] comprises a system for geocoding a given geographical area by dividing the area into a system of rectangular divisions and subdivisions. Each division and subdivision is then systematically designated with a consistent and uniform pattern of unitary code digits in a manner that imparts positional or locational meaning to the digits. The appropriate digits of successive divisions and subdivisions are

---

[1] A summary of independent Claim 17 is reproduced in the Appendix, which claim best characterizes the fundamental process upon which the Petitioner's invention is based.

then combined into composite code symbols which precisely locate the lower subdivisions within the larger geographical area by virtue of the positional meaning of each digit. The invention, as further recited by the narrower claims, comprises two specific applications of the above-described basic concept. First, an inward extension of the basic invention is provided for geocoding pre-existing irregular units such as city lots. Secondly, an outward extension of the invention is provided for geocoding the entire surface of the earth, i.e., adapting to pre-existing latitute and longitude lines.

The Patent Examiner rejected Claims 13, 14 and 16 through 25 on the ground of *res judicata* by reasons of a decision by the Patent and Trademark Office Board of Appeals in Petitioner's earlier application filed October 14, 1966. In addition, Claims 17 and 21 through 25 were rejected as being non-statutory under 25 U.S.C. 101. Further, Claims 13, 14, 16, 17, 18, 19 and 20 through 25 were rejected on the basis of obviousness under 35 U.S.C. 103. The Board of Appeals reversed the Patent Examiner's two rejections based upon *res judicata* and 35 U.S.C. 101, but affirmed the third rejection on the basis of obviousness under 35 U.S.C. 103.

The claims on appeal before the Board of Appeals were directed to the method used both to create and to designate the divisions and subdivisions of Petitioner's geocoding system and also to a geographical locator map produced by such method.

All claims were directed to the feature of employing uniform code digits in this regard. In asserting his rejection based upon obviousness, the Patent Examiner applied the U.S. patent to Baugh, 367, 178, as the primary reference, in various combinations with Harriman U.S. Patent No. 1,192,829, Henderson U.S. Patent No. 3,238,857

and Holm U.S. Patent No. 3,287,831, as secondary references. Baugh discloses that a rectangular territory may be divided and subdivided in a manner similar to that used in the Petitioner's system, differing primarily in that in Baugh the first tier has thirty-six units, while each of the lower tiers disclosed has four units. In addition, Baugh utilizes several different series of digits to designate the units of different tiers. Hence Baugh is not consistent or uniform in the patterns of designation in all of the tiers, which is a most critical feature of Petitioner's invention. The secondary references, Harriman, Henderson and Holm, were cited and relied upon solely for their general teachings regarding the printing of code symbols upon maps and hence are relevant only to this limited extent.

The Board of Appeals, in affirming the Examiner's rejection based upon obviousness under 35 U.S.C. 103, effectively held that the subject matter claimed by Petitioner's independent claims, Claims 13, 16 and 17 was obvious in view of the Baugh patent, even though the latter patent lacks a teaching of uniform patterns of indicia for the rectangular subdivisions, as required by these claims. This is the very crux of the invention in issue. The Board of Appeals then held that, notwithstanding the requirement of these independent claims for the critical distinguishing feature of Petitioner's invention, i.e. the uniform patterns of indicia for the rectangular subdivisions, such claims would further not be patentable under 35 U.S.C. 103 in view of Petitioner's application of his invention in the outward extension manifestation whereby the entire earth's surface might be geocoded.

On appeal of the Board of Appeals' decision to the U.S. Court of Customs and Patent Appeals, the latter

Court affirmed, concluding that notwithstanding the recitation by Petitioner's independent claims to a consis-numbering pattern, such recitation is contradicted by Petitioner's further applications of his basic invention in the inward and outward extensions as described earlier.

While it is true that the inward extension application is modified very slightly to adapt for pre-existing individual plots of land, and while it is also true that the outward extension application is similarly modified slightly to adapt to pre-existing lines of longitude and latitude, such slight modifications are entirely irrelevant to the basic invention being claimed in Petitioner's independent claims, which claims were never considered in their own light by the C.C.P.A. as required by the mandate of 35 U.S.C. 103. These claims recite the very essence or central core of Petitioner's system, which is in fact substantially the entire system.

The Petitioner filed a Petition for Rehearing of the C.C.P.A. decision, clearly citing the errors involved in the original decision, but the Petition was denied without opinion.

Accordingly, if unreviewed and unreversed, the effect of the C.C.P.A.'s decision shall result in a great injustice, inconsistent with both the mandate of 35 U.S.C. 103 and the entire body of legal precedents decided in accordance therewith.

REASONS FOR GRANTING THE WRIT

The C.C.P.A., in affirming the Board of Appeals' decision with regard to the issue of obviousness under 35 U.S.C. 103, did so in a manner clearly inconsistent with the mandate of this federal statute. Specifically stated, 35 U.S.C. 103 requires that a comparison be made

between the prior art and the invention being claimed before patentability based upon obviousness can be be determined. In ignoring Petitioner's basic invention as isolated and claimed by the independent claims and, instead, interpreting such claims in light of additional applications of the basic invention, the C.C.P.A. has obviously failed to apply 35 U.S.C. 103 in accordance with Congressional intent.

Amazingly, the C.C.P.A.'s failure to uphold the mandate of 35 U.S.C. 103 also contradicts the body of law previously established by that Court, which body of law clearly requires a comparison of the claimed invention as a whole with the prior art, and this in turn requires that every portion of appealed claims must be considered in determining the invention as a whole. *In re Duva,* 55 C.C.P.A. 829, 156 U.S.P.A. 90 (1967) and *In re Mancy,* 499 F.2d 1289, 182 U.S.P.Q. 303 (C.C.P.A., 1974). In the *Duva* case, the C.C.P.A. held that the "Court is required to focus attention in rejection under 35 U.S.C. 103 first on scope and content of prior art, then on *factual differences between invention disclosed in prior art and invention of claims in issue,* . . . (emphasis added)". *In re Mullen,* 481 F.2d 1333, 179 U.S.P.Q. 97 (C.C.P.A., 1973) exemplified the C.C.P.A.'s heretofore consistent position that rejections under 35 U.S.C. 103 must include more than a bare allegation that the distinctions relied upon are obvious.

Notwithstanding the above-indicated body of law established by the C.C.P.A., that Court has now apparently taken upon itself to unjustifiably and arbitrarily contradict its own established precedents in the Petitioner's case. The C.C.P.A has failed to recognize the most

---

[2] ". . . if the *difference between the subject matter sought to be patented and the prior art* are such . . . (emphasis added)"

fundamental basis utilized in the application of 35 U.S.C. 103 by refusing to isolate the comparison between Petitioner's claimed invention as a whole with the prior art *apart* from Petitioner's peripheral disclosure which merely manifests specific applications of the claimed invention.

The C.C.P.A.'s failure to comply with the mandate of 35 U.S.C. 103 and its blatant contradiction of its own previously established body of law regarding the application of this statute are further compounded by that Court's apparent indifference to the mandate of this Court as defined in *Graham v. John Deere Co.*, 383 U.S. 1, 15 L.Ed.2d 545, 86 S. Ct. 684. The *Graham* case has unquestionably asserted this Court's position with regard to patentability in general and patentability under 35 U.S.C. 103 in particular. As noted by Petitioner, this Court held in *Graham* that "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and *the claims at issue* are to be ascertained; and the level of ordinary skill in the pertinent art resolved (emphasis added)". Clearly, the C.C.P.A. has dispensed with this mandate in considering Petitioner's case since no attempt was made to define the differences between the prior art and the claims at issue. Instead, the claims were construed in light of additional factors which were neither pertinent or relevant to the basic invention as recited by the claims in issue.

Although the fundamental issue in the Petitioner's case stems from an incorrect application of a federal statute by a court having appellate jurisdiction, it is obvious that such error is in direct conflict with the mandate of the statute itself, the body of law previously established by that Court and the mandate of this Court with regard to the same subject matter.

Further, it has also become increasingly apparent that the Circuit Courts are in conflict over the exact manner in which 35 U.S.C. 103 is to be applied against a claimed invention, with many of the decisions on the matter being based upon a subjective disposition of the issues rather than towards the establishment of a consistent and uniform body of law. It is the Petitioner's strong belief that the basic injustice manifested in his case offers this Court a rare opportunity to resolve all such inconsistencies and conflicts with regard to the application of 35 U.S.C. 103 by establishing the much needed criteria under which this federal statute should apply.

It is believed to be clear and obvious that the C.C.P.A. has decided a federal question in a way which is in conflict with the mandate of this Court and has far departed from the accepted and usual course of judicial proceedings previously established for the application of the statute in question. Accordingly, it is respectfully urged that this Court's power of supervision be exercised to correct such a fundamental departure by the C.C.P.A. in its interpretation and application of this federal statute, 35 U.S.C. 103.

Further, Petitioner is of the strong belief that if this error by the C.C.P.A. is allowed to stand, it will only serve to discourage inventors and reduce the benefits desired by the Constitutional provision, Article I, Section 8, Cl. 8, that is ". . . To promote the Progress of Science and useful Arts, by securing the limited Times to Authors and Inventors the exclusive Right to their Writings and Discoveries."

CONCLUSION

In its most basic interpretation, this case involves the deprivation of an inventor's statutory right to a patent because of the C.C.P.A.'s erroneous application of 35 U.S.C. 103 by failing to distinguish and isolate the specific invention as claimed when prior art was applied thereagainst, as required by the mandate of this federal statute. Because this error is clearly inconsistent with the body of law heretofore established by the C.C.P.A. and this Court and will only serve to augment the existing confusion with regard to this statute's future interpretation and application, it appears particularly appropriate that the present case be reviewed by this Court.

Accordingly, Petitioner respectfully urges the Court to hear this case on its merits, by issuing a writ of certiorari to the Court of Customs and Patent Appeals.

Respectfully submitted,

FRANCIS D. THOMAS, JR.
JOSEPH SCHIMMEL
EUGENE MAR
Attorneys for Petitioner.

Of Counsel:

Bacon & Thomas
Suite 300
1755 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 979-9340

THOMAS M. SMALL
Fulwider, Patton, Rieber, Lee & Utecht
3534 Wilshire Boulevard, Suite 2400
Los Angeles, California 90010
(213) 380-6800

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Thursday, May 29, 1975

Before: Markey, Chief Judge, and Rich, Baldwin, Lane and Miller, Associate Judges and Almond, Senior Judge.

DECISION WITHOUT PUBLISHED OPINION

Patent and Trademark Appeal

No. 75-520. DELTA TIRE CORPORATION v. SPORTS CAR CLUB OF AMERICA, INCORPORATED. Affirmed

PETITIONS FOR REHEARING

Patent Appeals

No. 74-615. APPLICATION OF GERALD B. BAUMAN. Petition for rehearing denied.

No. 74-535. APPLICATION OF RONALD H. ESPY. Petition for rehearing denied.

Judge Almond participated in Patent Appeal No. 74-615, but took no part in the consideration of or decision in the other cases in which opinions have been filed this day.

Judge Baldwin took no part in the consideration of or decision in Patent Appeal No. 74-615.

May 29, 1975.

Note: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

IN THE MATTER OF THE APPLICATION OF GERALD B. BAUMAN	)))	Patent Appeal No. 74-615. Serial No. 61,299

DECIDED: February 27, 1975

MARKEY, Chief Judge.

DECISION

The decision of the Board of Appeals is *affirmed.*

OPINION

We agree with the board that the evidence of record indicates that the claimed subject matter would have been obvious to one of ordinary skill in the art.

We are not persuaded by the argument that Baugh is inapposite because the initial grid division has more squares than succeeding tiers of map subdivision. Appellant's independent claims recite each tier of map subdivision must divide each grid square into the same number of grids as the preceding division. Viewing appellant's specification and the open ended nature of appellant's claim language, employing "comprising," we conclude that the alleged distinction does not exist. An example

in appellant's specification, corresponding to dependent claim 25, discloses an initial division of the earth into eight parts with further subdivision being into parts other than eight. After reaching one degree squares, further subdivision is into nine square grids. The initial division is a variant just as in Baugh.

Nor do we see a nonobvious distinction based upon the particular code characters selected to designate each subdivision of the map. In Baugh a four character code designates the location of a specific geographic area. Each character specifies an increasingly precise location and each character designates a particular location. It is of no moment that appellant chooses to use Arabic numbers as the code characters. The office of the code character is to direct the user to a particular geographic area. Letters serve the code function equally as well as numbers because the code *per se* has no particular meaning aside from directing the user. Runes, cuneiform, or hieroglyphic characters would serve equally well. Baugh teaches that in choosing code characters, "consecutive alphabetical letters *a*, *b*, *c*, and *d*" may be replaced with "consecutive numerals."

The differences appellant urges between the claimed subject matter and the prior art are not such that the claimed subject matter as a whole would not have been obvious at the time it was made.

PA 74-615

[57] Opinion and Decision of Board of Appeals, February 20, 1974

Before Bennett and Burns, Examiners-in-Chief, and Forrer, Acting Examiner-in-Chief.

Bennett, Examiner-in-Chief.

This is an appeal from the final rejection of claims 13, 14 and 16 through 25. No claims have been allowed.

Claim 13 is reproduced below:

13. A geographical locator map comprising:

a map representation of a geographical area;

a first grid array overprinted on said map representation and dividing the same into a preselected [58] number of generally rectangular first subdivisions of equal size in a uniform grid pattern of transverse and longitudinal rows;

a second, smaller grid array overprinted on each of the said first subdivisions and dividing the same into the same preselected number of generally rectangular second subdivsions in the same pattern;

a selected number of additional successively smaller grid arrays having the same uniform pattern and the same number of subdivisions overprinted on said second subdivisions and successive subdivisions defined by said additional grid arrays, thereby subdividing said map representation progressively until subdivisions of a preselected smallest size are obtained;

and a composite code symbol for each of the last mentioned subdivisions overprinted on such subdivision and comprising a number of single digits equal to the number of different grid arrays overprinted upon said map representation so as to include one single digit for each level of subdivision of said map representation, each

single digit of said composite code symbol being selected from a series of different single digits equal in number to said preselected number, one such single digit being assigned to each subdivision of each such level according to a preselected pattern correlated with an uniformly applied at all levels of said uniform pattern, and the code symbol for each subdivision comprising the single digit assigned that subdivision and, in order, the single digits of successively larger subdivisions in which the subdivision lies, whereby the code symbol on each subdivision locates the same in each level of subdivisions and relative to all other subdivisions within said geographical area.

The references of record relied upon are:

Baugh	367,178	July 26, 1887
Harriman	1,192,829	July 25, 1916
Henderson	3,238,857	March 8, 1966
Holm	3,287,831	Nov. 29, 1966

The invention relates to dividing up geographical areas of the earth's surface.

[59] Claims 13, 14 and 16 through 25 stand rejected on the ground of *res judicata* by reasons of the decision of the Board of Appeals in appellant's earlier filed application, Serial No. 586,851.

Claims 13, 16, 17, 18 and 20 through 25 stand further rejected under 35 USC 103 as obvious over Baugh in view of Harriman.

Claims 14 and 19 stand further rejected under 35 USC 103 as obvious over Baugh in view of Harriman and Henderson or Holm.

Claims 17 and 21 through 25 stand further rejected under 35 USC 101 as not being within the statutory classes of invention.

We will take up the last rejection first. In the case of *In re* Musgrave, 57 CCPA 1352, 431 F.2d 882, 167 USPQ 280, the

Court said: "all that is necessary, in our view, to make a sequence of operational steps a statutory 'process' within 35 USC 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of 'useful arts'." In our opinion, the method of claim 17 is intimately related to the dividing and sub-dividing of geographical areas. This activity could be characterized as map making and as such is one of the useful arts. We note that surveying is a frequently offered course in engineering schools. Our interpretation of the claims place them in the technological arts as discussed in *In re* Musgrave, cited above. In reaching this conclusion we **[60]** are mindful of the opinion of the Supreme Court of the United States in Gottschalk v. Benson, 175 USPQ 673. In that case the Court found that a mathematical formula which had no substantial practical application except in connection with a digital computer was not patentable. In the case before us no mathematical formula is involved. The method in question relates to sub-dividing land. We do not sustain this rejection.

We will next discuss the rejection on the grounds of *res judicata*. We find the claims, the disclosure, including the drawings, and the prosecution history, to have so changed that this rejection will not stand. The Court of Customs and Patent Appeals in a series of cases dealing with *res judicata* has taken the position that *res judicata* is properly applied only where the issue is the same and that new issues are presented when the claims, the supporting facts, or the law is different. In the case before us we have claims that are different, the disclosure which supports those claims is different, and the prosecution record is different. Accordingly, this rejection will not stand. The examiner's attention is directed to the *Journal of the Patent Office Society*, April 1972, an article by Chessie E. Rehberg entitled "Res Judicata in Patent Office Prosecution". It would be beyond the scope of this decision to endorse the contents of that article in its entirety. We recommend this article as a general guide to the pertinent cases dealing with this facet of the law.

[61] In contrast to our reversal of the *res judicata* rejection and the non-statutory subject matter rejection, we affirm the rejections of all of the claims on the prior art for the reasons presented by the examiner and also by the Board of Appeals in the earlier Board decision. We recognize that there is claimed subject matter before us which was not before the earlier Board. Claim 13, for example, recites that a composite code symbol is provided for each of the subdivisions overprinted on each subdivision and that the symbol comprises a number of single digits equal to the number of different grid arrays overprinted. We find this to be a logical extension of the Baugh reference and see nothing unobvious about printing the section number right on the map itself. Figure 5 of Baugh suggests this by showing the letters printed on the grid. We recognize that the textual part of the Baugh disclosure does not describe the map itself as having these letters or numbers printed directly on it. Column 2 of Baugh does suggest that instead of letters A, B, C and D for indicating the squares consecutive numbers might also be employed. We also find appellant's concept as shown in figure 4 of his drawing, that part of the number is printed in the margin and part of the number is printed on the lot itself, to be obvious. This is common practice in designating the lots in large subdivisions in suburban **[62]** communities where the maps are drawn giving lot designations on the lots themselves but there are other designations in the margin of the map indicating the relationship of the one section to the whole. In this common practice to put all manner and sorts of signs, symbols and designations on maps. Appellant emphasizes that the meaning of a digit remains the same as he uses it regardless of the level for which it is used. This is the concept that appellant finds lacking in the prior art. We note that appellant does not really maintain the type of consistency he now describes as a feature of his invention. Some aspects of appellant's invention are confusing. For example, he divides the earth's surface into a plurality of initial units defined by the equator and the 0°, 100° and 180° meridians. It is clear that the eight sectors of

the earth so formed will not all be of the same size. At the second level, appellant divides these eight sections into ten 10° slices. This is easily accomplished for the sections which are 100° in extent but is going to be impossible for the smaller sections which are only 80° in extent. Be that as it may, this is not the major problem that confronts us. The major problem is with appellant's argument regarding the consistencies of numbering. We do not believe that the consistency earnestly argued for exists. Take the number 4, for example, it represents a 1/10th linear part of a 10° longitudinal sector. In **[63]** contrast, it represents a 1/3 part of the linear sector of the three by three matrix shown in Figure 2. The number then represents a different fractional part of a bigger part depending upon where it is found in a series of numbers such as depicted in Figure 4. The meaning of each digit does not remain the same regardless of the level for which it is used.

In our opinion Baugh is the strongest piece of evidence presented by the examiner. Baugh describes a method of dividing a plot of land into an area made up of four squares and then subdividing each of these smaller areas into four smaller squares and then dividing each of these smaller squares into four more squares and then designating each of the small subdivided areas by numbers or letters. This is the essence of appellant's method. The patent to Harriman does disclose dividing the continental United States into other areas or into blocks with numbers in the blocks and in Figure 3 there is presented an enlarged view of one of these blocks with numbers in the margin which relate this unit to the whole. Appellant admits in his brief that the references do show what the examiner says that they show, but he states, for example at the top of page 26, that it is not the mere printing of code symbols "elsewhere" on a map that is important in the claims. Appellant admits that Henderson and Holm show this feature as well as Harriman. The major thrust of appellant's argument is, as we stated before, that the **[64]** meaning for a digit remains the same regardless of the level for which it is used.

As pointed out earlier, we do not agree with this characterization of appellant's system or method. We also find it obvious to have a number retain a single meaning whenever used.

Accordingly, the decision of the examiner under 35 USC 103 is affirmed.

AFFIRMED.

R. D. BENNETT)
Examiner-in-Chief)
)
WALTER W. BURNS, JR.) BOARD
Examiner-in-Chief) OF
) APPEALS
DONALD D. FORRER)
Examiner-in-Chief)
(Acting))

• • •

Summary of Claim 17

The method of creating divisions and subdivisions within a generally rectangular geographical area, and producing a system of code-indicia, comprising the steps of:

1. dividing the area with a uniform pattern of longitudinal and transverse lines;
2. identifying each of the first divisions with a single digit from a selected series of digits according to a predetermined sequence and in a selected pattern;
3. subdividing each of the first divisions in the same pattern;
4. identifying each of the subdivisions with a single digit from the same series according to the same sequence, and in the same pattern;
5. repeating the dividing and identifying steps, and each time using the same single digit to identify and locate the same relative position;
6. and designating each subdivision with a composite code symbol comprising, in series, the digits of the subdivision and the digits of each successively larger subdivision within which it lies.

(No Model.) 2 Sheets—Sheet 1.

W. A. BAUGH.

METHOD OF SUBDIVIDING AND DESIGNATING LAND.

No. 367,178. Patented July 26, 1887.

Fig: 1.

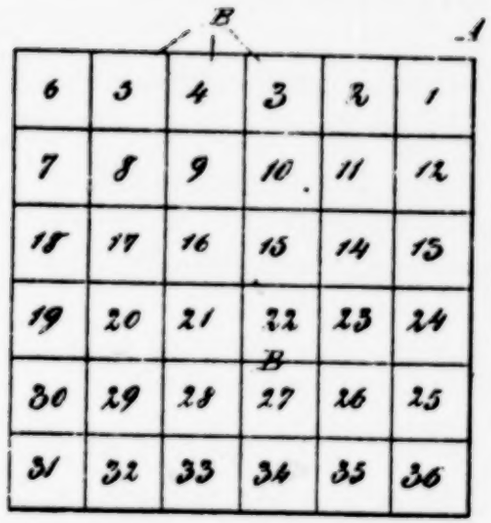


Fig: 2.

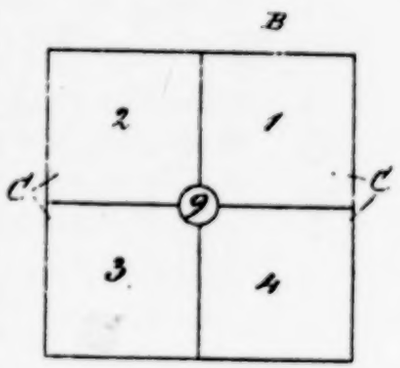


Fig: 3.

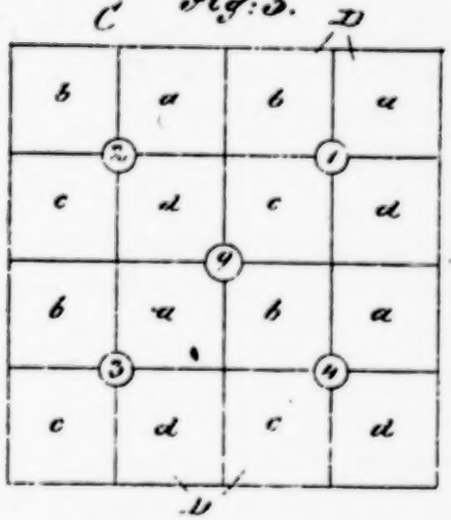
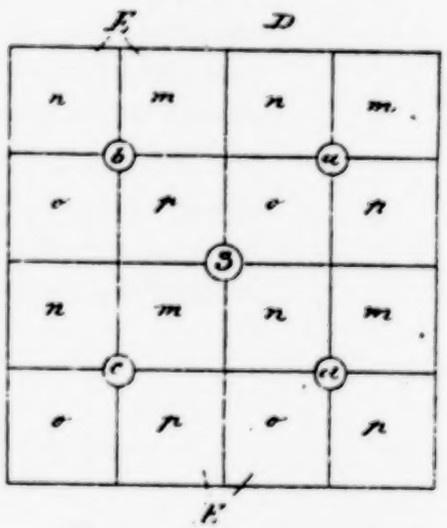


Fig: 4.



WITNESSES:

Chas. Hedgewick

INVENTOR:

W. A. Baugh

BY Munn & Co.

ATTORNEYS.

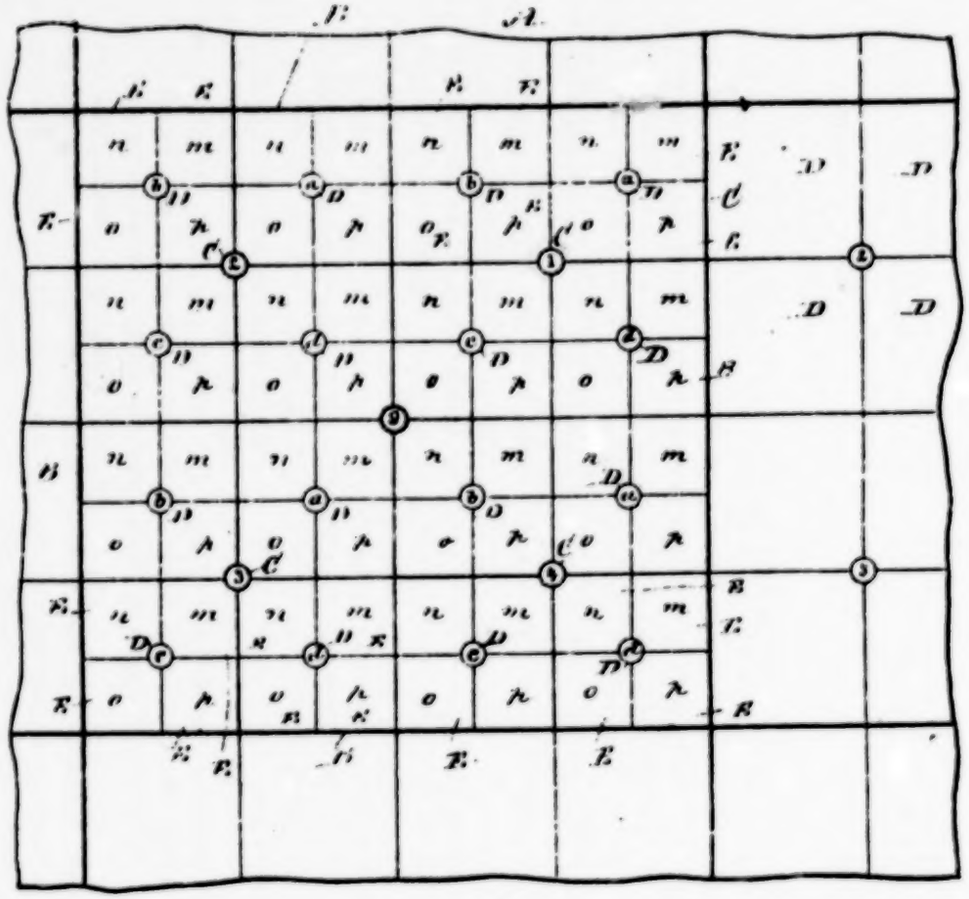
(No Model.) 2 Sheets—Sheet 2.

W. A. BAUGH.

METHOD OF SUBDIVIDING AND DESIGNATING LAND.

No. 367,178. Patented July 26, 1887.

Fig: 5.



WITNESSES:

Chas. Hedgewick

INVENTOR:

W. A. Baugh

BY Munn & Co.

ATTORNEYS.

UNITED STATES PATENT OFFICE.

WILLIAM A. BAUGH, OF MELBOURNE, FLORIDA.

METHOD OF SUBDIVIDING AND DESIGNATING LAND.

SPECIFICATION forming part of Letters Patent No. 367,178, dated July 26, 1887.

Application filed January 3, 1887. Serial No. 223,221. (No model.)

To all whom it may concern:

Be it known that I, WILLIAM A. BAUGH, of Melbourne, in the county of Brevard and State of Florida, have invented a new and Improved Method of Subdividing and Designating Land, of which the following is a full, clear, and exact description.

The object of my invention is to provide a new and improved method for subdividing and designating land, which method is simple and avoids mistakes in designating a certain plot of ground.

The invention consists in the method of dividing a plot of land—such as a township—into thirty-six sections, numbered successively, and then dividing each section into four equal squares, each of which is divided into four equal squares, and each of the latter is again divided into four equal squares, and all the squares are designated by numerals or letters, or both.

Reference is to be had to the accompanying drawings, forming part of this specification, in which similar letters of reference indicate corresponding parts in all the figures.

Figures 1 to 5 illustrate the method of laying out and designating public lands.

Public lands are divided into townships and sections. A township is six miles square—that is, contains thirty-six square miles, or thirty-six sections numbered successively, as shown in Fig. 1, and each section contains six hundred and forty acres. Heretofore these sections have been divided into subdivisions of quarters and eighths, which have been designated by the respective marks of the compass—for instance, "N. W. ¼ of N. W. ¼ section 9." This method of subdividing land causes considerable trouble in designating a given small area or subdivision, and also requires a considerable space for designating a certain part of one section in writing, which has often to be done in public records and other documents. By my improved method I avoid all these difficulties, and can indicate with a few letters and numerals any desired plot of land.

The township A contains thirty-six square miles, as above described, and is divided into thirty-six sections, B, numbered consecutively from 1 to 36, as shown in Fig. 1. Each of these sections B is subdivided into four equal squares, C, which are marked consecutively from 1 to 4, commencing at the northeast corner, as shown in Figs. 2 and 5, in which the section 9 of the township A is selected for representation.

Each of the squares C is subdivided into four equal squares, D, which are designated in the center with the consecutive alphabetical letters *a*, *b*, *c*, and *d*, also commencing at the northeast corner, as shown in Figs. 3 and 5. Instead of using the said letters *a*, *b*, *c*, and *d* for indicating the squares D, consecutive numerals may also be employed. Each of the squares D is again subdivided into four equal squares, E, each marked in the center with the consecutive alphabetical letters *m*, *n*, *o*, and *p*, commencing at the northeast, as shown in Figs. 4 and 5. Other alphabetical letters or numerals may be substituted for the letters *m*, *n*, *o*, and *p*. Now, it will be seen that if it is desired to express, for instance, in writing the location of land-subdivision square E of the upper left corner of section 9, it would read as follows: "Section 9 2 *b* *n*," or "*n* of *b*, of 2, of section 9." The same expressed in writing by the old method would read as follows: "N. W. ¼ of N. W. ¼, of N. W. ¼ of section 9."

It will also be seen that if the sections B each contain six hundred and forty acres, then each square C has one hundred and sixty acres, and each square D contains forty acres, and the last subdivision, E, contains ten acres; but each section B may contain a greater or less number of acres and the subdivided squares proportionately more or less.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. The herein-described method for subdividing and designating land, consisting of dividing a plot of land—such as a township—into thirty-six consecutively-numbered sections, then dividing each section into four equal squares designated by the consecutive numerals 1, 2, 3, and 4, and then dividing each of these numeral squares into four equal squares which are marked by either four consecutive alphabetical letters or by four consecutive numerals, and then again dividing each of the last-described squares into four equal squares.

14a

15a

BEST COPY AVAILABLE

which are designated by four consecutive alphabetical letters which have not been used to designate any of the before-described squares, substantially as shown and described.

2. The herein-described method of designating the quarter, sixteenth, and sixty-fourth parts of sections of land, which consists in designating the quarters of a section of land by a regular succession of numerals, beginning at the northeast corner, in again designating the quarters of each quarter-section of land by a regular succession of letters, beginning in the northeast corner, and in again designating the quarters of each sixteenth of a section of land by another regular series of letters not before used, beginning at the northeast corner, as set forth.

WILLIAM A. BAUGH.

Witnesses:
CHAS. D. SWEET,
JAMES PRITCHARD.

16a

Supreme Court, U. S.
FILED
OCT 20 1975
MICHAEL RODAK, JR., CLERK

No. 75-301

In the Supreme Court of the United States

OCTOBER TERM, 1975

GERALD B. BAUMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-301

GERALD B. BAUMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner filed with the Commissioner of Patents an application for a patent on a "Geographical Locater System", through which any location in a given geographic area may be identified by reference to its position within a systematic grid (Pet. 3). The grid divides the area into equal rectangles, numbered *seriatim*; each rectangle, in turn, is subdivided into equal rectangles with corresponding numbers, and these smaller rectangles are again subdivided. Accordingly, any location may be identified as a series of

595-168—75——1

numbers, signifying its position within progressively smaller rectangular units (Tr. 12–22).[1]

A primary examiner in the Patent Office concluded, *inter alia*, that petitioner's claimed invention[2] was "obvious" in light of the prior art (35 U.S.C. 103), including a patent issued to Baugh in 1887 (Tr. 52). Accordingly, the application was rejected. The Patent Office Board of Appeals affirmed the examiner's decision on this ground (Tr. 54); the Court of Customs and Patent Appeals affirmed, holding that "the evidence of record indicates that the claimed subject matter would have been obvious to one of ordinary skill in the art" (Pet. App. 2a).

Contrary to petitioner's contention (Pet. 7), the Board of Appeals carefully compared the distinctive features of petitioner's claimed invention with the prior art, as required by 35 U.S.C. 103.[3] In rejecting the claimed invention on the basis of obviousness in light of the prior art, the Board of Appeals stated (Pet. App. 8a–10a):

[1] "Tr." designates the Transcript of Record in the United States Court of Customs and Patent Appeals.

[2] Petitioner's application contained three independent claims and nine dependent claims. Claim 17, the only independent "method" claim, described the substance of petitioner's claimed invention; the dependent claims entailed particular applications of it. See 37 C.F.R. 1.75(c).

[3] 35 U.S.C. 103 provides in pertinent part that: "A patent may not be obtained * * * if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

> [Petitioner] emphasizes that the meaning of a digit remains the same as he uses it regardless of the level for which it is used. This is the concept that [petitioner] finds lacking in the prior art. * * *
>
> In our opinion Baugh is the strongest piece of evidence presented by the examiner. Baugh describes a method of dividing a plot of land into an area made up of four squares and then subdividing each of these smaller areas into four smaller squares and then dividing each of these smaller squares into four more squares and then designating each of the small subdivided areas by numbers or letters. This is the essence of [petitioner's] method. * * * We also find it obvious to have a number retain a single meaning whenever used.

As this Court noted in *Graham* v. *John Deere* Co., 383 U.S. 1, 18, "[w]hat is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context." A finding of obviousness will be deemed correct so long as it is based, as here, upon a careful comparison between the scope and content of prior art and the claimed invention, in light of the level of ordinary skill in the pertinent art (*id.* at 17). Accordingly, the Court of Customs and Patent Appeals correctly affirmed the Board of Appeals' decision sustaining the finding of nonpatentability.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1975.

U.S. GOVERNMENT PRINTING OFFICE: 1975